

**DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS NUMBER: 02-0452 CSET
CONTROLLED SUBSTANCE EXCISE TAX
FOR TAX PERIODS: 2000**

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Issue

Controlled Substance Excise Tax: Imposition

Authority: IC 6-7-3-19 (2), IC 6-7-3-5, IC 6-8.1-5-1 (b).

The taxpayer protests the imposition of the controlled substance excise tax.

Statement of Facts

On April 13, 2000 cocaine was found in the taxpayer's car. The appropriate county prosecutor sent the Indiana Department of Revenue, hereinafter the "department," a letter requesting that the department institute a controlled substance excise tax investigation. The department issued a Record of Jeopardy Finding, Jeopardy Assessment, Notice and Demand on July 18, 2002 in a base tax amount of \$35,957.60. The taxpayer protested the assessment. A telephone hearing was held to determine if the controlled substance excise tax was properly imposed.

Controlled Substance Excise Tax: Imposition

Discussion

The department can only commence an investigation into and collection of controlled substance excise tax after it is notified pursuant to the terms of IC 6-7-3-19 (2) as follows:

. . . in writing by the prosecuting attorney of the jurisdiction where the offense occurred that the prosecuting attorney does not intend to pursue criminal charges of delivery, possession, or manufacture of the controlled substance that may be subject to the tax required by this chapter.

In this case, the department received this notification by letter from the taxpayer's county prosecutor in the following words:

This office requests that a Controlled Substance Excise Tax assessment be prepared on the drugs regarding **STATE VS. JOSE A. BALLESTEROS** under **CAUSE #45G04-004-CF-00080**. This office will not be prosecuting this matter due to the suppression of the evidence.

The taxpayer argues that the prosecutor's letter does not meet the requirements of the controlled substance excise tax imposition statute because the prosecutor did not voluntarily decide not to prosecute. Rather, the prosecutor was forced not to prosecute due to the Court's suppression of evidence. The department does not find this argument persuasive. The statute merely states that the prosecutor must indicate that he "does not intend to pursue criminal charges." The statute does not indicate a time frame within which the prosecutor must make this decision. Neither does the statute specify a necessary motivation on the part of the prosecutor. In his letter to the department, the prosecutor clearly writes that he, "will not be prosecuting this matter." That statement conforms to the statutory requirements for imposition of the controlled substance excise tax.

The taxpayer also argues that the department should not consider as evidence the cocaine that the Sheriff found in the taxpayer's car since it was ruled inadmissible in a criminal trial. Tax matters are, however, civil actions. The department has consistently considered evidence that was suppressed for the purposes of a criminal trial. There is no persuasive reason to change that policy in this matter.

IC 6-7-3-5 imposes the Controlled Substance Excise Tax on the possession of cocaine in the State of Indiana. Departmental assessments are presumed to be correct and the taxpayer bears the burden of proving that an assessment is incorrect. IC 6-8.1-5-1 (b). The taxpayer admitted that he was the driver and only occupant of the car where the cocaine was found and that he was transporting the cocaine for another party. This constitutes the possession of cocaine. The taxpayer did not sustain his burden of proving that the controlled substance excise tax was improperly imposed.

Finding

The taxpayer's protest is denied.